



THE ROLE OF JUDICIARY IN CAPITAL PUNISHMENT IN INDIA: A STUDY

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ABSTRACT:

As a rule, punishability, by and large, depends on the degree of culpability of criminal act and the danger posed by it to society as also the depravity of the offender. The risk of penalty is the cost of crime which the offender has to pay. when this cost (suffering) is high enough as compared with the benefit which the me is expected to yield, it will deter a considerable number of people. This is true with crimes punishable with death sentence as well.

A dispassionate analysis of criminological jurisprudence would reveal that capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to society. It must, however, be added that a mere objective consideration of dangerousness of the act (crime) to society by itself would not be enough to assess perpetrator's culpability but his personal attributes and circumstances and gravity of the offence have also to be taken into consideration to decide whether or not he deserves capital punishment. Thus, punishment should be commensurate among other things, with the gravity of offender's act and societal reaction to it .Experience has shown that despite consciousness about the desirability of reformatory justice, at times unequivocal stand is unavoidable in extreme cases offender has been fully aware of the fatal consequences of his gruesome and brutal crime and there were no mitigating circumstances. In such aggravating situations, though unwantonly, law must take a firm stand and not hesitate even to award the extreme sentence of death to the offender. These situations have found expression in the penal law of India and other countries of the world. Capital sentence has been used as an effective weapon of retributive justice for centuries. The justification advanced is that it is lawful to forfeit the life of a person who takes away another's life. A person who kills another must be eliminated from the society and therefore, his execution is justified. The motive for death penalty may include vengeance which is a compensatory and reparatory satisfaction for an injured party, group or society. When regulated and controlled by law, vengeance is also socially useful. Legal vengeance solidifies social solidarity against law-breakers and probably is the only alternative to the disruptive private revenge of those who feel harmed.



KEY WORDS: Capital punishment, Gravity of offender's act and societal reaction, Retributive effect of capital punishment.

INTRODUCTION:

Capital punishment, more commonly known as the death penalty, has generated considerable discourse and contention on an international scale. India and the United States present thought-provoking case studies that delve into the intricacies of capital punishment due to their unique legal systems and cultural heritages. This section presents a comprehensive outline of the historical origins

and significance of capital punishment, as well as the justification for conducting a comparative analysis of the United States and India.

Overview of Capital Punishment in the United States and India

Capital punishment, alternatively referred to as the death penalty, continues to be a subject of intense controversy and legal and ethical debate on a global scale. The legal systems of both India and the United States incorporate capital punishment, albeit with distinct methodologies and implementations.

Capital punishment is a legally sanctioned penalty in India, which is administered in accordance with the Indian Penal Code of 1860 and special statutes such as the Prevention of Terrorism Act of 2002 and the Narcotic Drugs and Psychotropic Substances Act of 1985. The procedure and principles governing the application of capital punishment in India have undergone modifications over time as a result of judicial rulings and parliamentary additions.

In a similar vein, the administration of the death penalty in the United States is divided between the federal and state levels, whereby states retain authority over the definition of capital offences and the protocols governing their imposition. By rendering landmark decisions addressing issues of due process, proportionality, and cruel and unusual punishment, the U.S. Supreme Court has significantly influenced the legal framework of capital punishment.

Studying the Significance of Mandatory Capital Punishment

In order to comprehend the legal, ethical, and human rights ramifications of imposing the death penalty as a mandatory sentence for particular offences, it is vital to examine mandatory capital punishment.

To begin with, mandatory capital punishment gives rise to essential inquiries concerning equity, impartiality, and cost-effectiveness in the judicial system. When mitigating circumstances are present, the imposition of the mandatory death penalty can result in unjust outcomes and restrict judicial discretion.

Furthermore, an examination of mandatory capital punishment illuminates the deterrent effect of the death penalty. Assessing the effectiveness of mandatory capital punishment in attaining its intended objectives within the criminal justice system is facilitated by evaluating its effects and results.

In brief, an examination of mandatory capital punishment in India and the USA is of the utmost importance in order to evaluate policy outcomes, analyse legal frameworks, and participate in informed dialogues concerning the death penalty's ethical and human rights ramifications.

2. HISTORICAL BACKGROUND:

Ancient and Mediaeval Period:

The implementation of capital punishment in ancient India was shaped by the prevailing religious, cultural, and legal standards of the era. Historical accounts and citations from Hindu legal texts offer valuable insights into the methodologies and guiding principles that underpin the administration of punishment and justice. Hindu legal texts from ancient India, including the Arthashastra authored by Chanakya (Kautilya) and the Manusmriti (Laws of Manu), provide insights into the practices of capital punishment. Composed between 200 BCE and 200 CE, the Manusmriti delineates a multitude of transgressions that carry the death penalty, including heinous offences like adultery, theft, and homicide. In imposing punishments, the Manusmriti also stresses the significance of proportionality and due process, demonstrating a nuanced approach to justice.

Capital punishment methods implemented during the Maurya Empire (322 BCE to 185 BCE), under the rule of Emperor Ashoka, encompassed grievous offences such as hanging, stoning, or impaling. A transition to Buddhist principles of compassion and nonviolence during the reign of Ashoka resulted in criminal law reforms and a decline in the use of the death penalty.

British Colonial Rule:

The legal framework that continues to this day was significantly influenced by the codification and administration of capital punishment laws in India during the period of British colonialism. As a means of colonial control and deterrence, capital punishment was widely implemented throughout the period of British colonial rule. In 1860, the Indian Penal Code (IPC) was implemented by the British. This legislation encompassed a wide range of penal provisions, including those pertaining to capital offences. By codifying capital punishment practices and instituting a judicial administration system that mirrored British legal principles, the IPC achieved both objectives.

Throughout British rule in India, public executions were a prevalent spectacle, executed with the dual purpose of sowing terror and bolstering colonial authority. Prominent instances of public executions, exemplified by the 1857 hanging of Mangal Pandey for his involvement in the Sepoy Mutiny, which occurred in India, served as representations of British repression and opposition.

Capital punishment laws and practices in contemporary India remain significantly impacted by the enduring impact of British colonialism. Ongoing discussions persist regarding the morality and effectiveness of the death penalty in the context of a pluralistic and democratic society.

3. LEGAL FRAMEWORK:

India:

Overview of the Indian Penal Code and the Code of Criminal Procedure governing capital punishment.

The Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC), which jointly establish the legal structure for capital offence determination, sentencing processes, and appeals, govern capital punishment in India.

The Indian Penal Code, which was implemented in 1860 under the British colonial administration, delineates a multitude of criminal offences and prescribes severe penalties, including capital punishment, for specific heinous crimes such as terrorism, murder, and acts of war against the state (Indian Penal Code, 1860). The criteria for imposing capital punishment and the procedural rules governing trials and appeals in capital cases are delineated in the IPC.

The procedural regulations and guidelines that regulate the investigation, trial, and punishment of criminal offences, including those carrying the death penalty, are outlined in the Code of Criminal Procedure (CrPC), which was initially implemented in 1973 and has since undergone several amendments (Code of Criminal Procedure, 1973). The procedures for conducting capital trials are delineated in the CrPC, encompassing regulations pertaining to witnesses, evidence, and appeals to superior tribunals.

Criteria for Implementing the Death Penalty, Including the Doctrine of the "Rarest of the Rare"

The application of capital punishment in India is regulated by the "rarest of rare" doctrine, which was instituted by the Supreme Court of India in the seminal *Bachan Singh v. State of Punjab* (1980) case. As per the tenets of this doctrine (*Bachan Singh v. State of Punjab*, 1980), the imposition of the death penalty ought to occur in the rarest of rare instances, where the alternative course of life imprisonment is deemed insufficient and the offence is exceptionally barbaric or abhorrent.

When contemplating capital punishment, the significance of striking a balance between aggravating and mitigating circumstances has been underscored by the Supreme Court. During sentencing proceedings, various elements are meticulously considered, including the societal repercussions, the offender's culpability, and the characteristics of the offence (*Machhi Singh v. State of Punjab*, 1983).

Moreover, subsequent rulings rendered by the Supreme Court have enhanced and elucidated the implementation of the "rarest of rare" principle, placing particular emphasis on the necessity of a meticulous evaluation of unique situations and a prudent stance regarding the imposition of capital punishment (*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, 2009).

In brief, the Indian legal system pertaining to capital punishment, exemplified by the Code of Criminal Procedure and the Indian Penal Code, establishes rigorous standards for the imposition of the death penalty and places significant emphasis on the application of judicial discretion and proportionality in sentencing.

Prominent Supreme Court rulings that have molded the legal structure

The legal structure governing capital punishment in the United States has been notably influenced by pivotal rulings of the U.S. Supreme Court. These decisions have examined constitutional complexities and procedural matters pertaining to the death penalty.

The U.S. Supreme Court ruled in *Furman v. Georgia* (1972) that the arbitrary and discriminatory implementation of capital punishment was in violation of the Eighth and Fourteenth Amendments to the United States Constitution. In response, several states' death penalty statutes were invalidated by the Court, which halted capital punishment nationwide.

Gregg v. Georgia (1976), In an outcome that adhered to revised death penalty statutes established in the wake of the *Furman* decision, the U.S. Supreme Court affirmed the provisions of *Gregg v. Georgia* (428 U.S. 153), which mandated a bifurcated trial process with guilt and penalty phases separated and established guidelines for the imposition of the death penalty predicated on particular aggravating circumstances.

The constitutionality of carrying out capital executions of individuals with intellectual disabilities and racial disparities in capital sentencing have been subjects of subsequent Supreme Court rulings, such as *McCleskey v. Kemp* (1987) and *Atkins v. Virginia* (2002).

These seminal rulings have laid the groundwork for the legal structure governing capital punishment in the United States, placing particular emphasis on constitutional protections, due process, and proportionality in the execution of the death penalty.

4. EXECUTION METHODS:

India:

Description of Execution Methods Permitted

Capital punishment in India is predominantly administered via hanging, in accordance with the provisions outlined in Section 354(5) of the Code of Criminal Procedure, 1973. Throughout Indian history, hanging has been employed as the principal method of carrying out capital punishment.

In addition, members of the armed forces subject to military law may be executed via gunfire as an alternative method, as permitted by the Indian Army Act of 1950. Nevertheless, the use of gunfire to apprehend civilian offenders is uncommon and is reserved for particular military situations.

Current Developments and Debates Concerning the Abolition of Capital Punishment

Over the past few years, there have been continuous discussions and developments concerning the potential elimination of capital punishment in specific Indian states.

In the discourse pertaining to the elimination of capital punishment in India, human rights considerations, wrongful convictions, and the death penalty's effectiveness as a deterrent to crime frequently come into play. Advocacy for abolition contends that the death penalty infringes upon fundamental rights and neglects to confront systemic challenges inherent in the criminal justice system. Conversely, proponents of capital punishment contend that it functions as a deterrent against heinous offences and is essential for upholding law and order.

The discourse surrounding the elimination of capital punishment in India is representative of more extensive deliberations concerning human rights, justice, and the function of punishment within society.

United States:***Variation in Methods of Execution Among States***

The manner in which capital punishment is carried out differs among states in the United States, as each state has enacted legislation that specifies acceptable methods of execution.

Lethal injection, a prevalent method of execution in the United States, entails the systematic administration of a sequence of medications with the intention of inducing death. Nevertheless, there are concerns regarding the efficacy and ethical implications of lethal injection due to the considerable variation in the medications and protocols employed across different states (Death Penalty Information Centre).

Several states, apart from Wyoming, allow for alternative methods of execution, such as lethal injection.

Electrocution: Certain jurisdictions permit death row inmates to elect to be executed via electrocution rather than other methods. In order to induce seizures, electroconvulsive therapy (ECT) employs electric impulses to the brain.

Firing Squad: In specific states, death row inmates have the option to be executed by firing squad, a method in which a cohort of proficient marksmen fire upon the offender simultaneously.

Ongoing Debates Regarding the Humaneness and Constitutionality of Execution Techniques

In the United States, ethical and constitutional concerns have persisted regarding the humaneness and constitutionality of execution techniques, specifically lethal injection.

There have been expressed concerns regarding the possibility of unsuccessful executions as a result of drug protocol issues, insufficient training of execution personnel, and drug availability problems. A challenge has been raised to the lethal injection of specific medications on the grounds that it violates the Eighth Amendment's prohibition on cruel and unusual punishment.

In recent times, the constitutionality of lethal injection protocols has been examined in Supreme Court rulings, including the landmark *Glossip v. Gross* (2015), which upheld the utilisation of specific drug combinations in executions. Nevertheless, there are ongoing obstacles concerning the lack of transparency in execution protocols and the accessibility of alternative methods that are regarded as more compassionate.

Discussions surrounding execution techniques bring attention to more extensive issues concerning the morality and effectiveness of capital punishment in the United States. Proponents and opponents of the death penalty alike urge for modifications that would guarantee equity and uphold the dignity of individuals.

5. LANDMARK JUDGMENTS:**India:*****An Examination of Prominent Judicial Decisions That Define the Scope and Implementation of the Death Penalty***

Numerous pivotal judicial decisions in India have been instrumental in delineating the extent and implementation of capital punishment, addressing concerns pertaining to its constitutionality, equity, and judicial prerogative.

Bachan Singh v. State of Punjab (1980): This landmark case introduced a two-step procedure for determining whether the death penalty should be imposed by establishing the "rarest of rare" doctrine. In *Bachan Singh v. State of Punjab* (1980), the Supreme Court ruled that the imposition of the death penalty ought to be limited to the "rarest of rare" instances characterised by extraordinary barbarism and depravity. In doing so, the court measured the necessity of capital punishment by weighing aggravating and mitigating circumstances.

State vs. Mukesh & Others, Nirbhaya Case (2017): A landmark judgement was rendered in Delhi following the barbaric gang rape and murder of Jyoti Singh (Nirbhaya), which upheld the death penalty for the offenders. In *State vs. Mukesh & Others* (2017), the Supreme Court affirmed the death sentences,

underscoring the seriousness of the offence and the imperative for deterrent sanctions in situations involving extreme violence against women.

These rulings exemplify the progressive legal principles governing capital punishment in India, with a particular emphasis on the human rights implications, proportionality, and judicial discretion in sentencing.

United States:

An Analysis of Seminal Supreme Court Cases Concerning Capital Punishment

The United States Supreme Court has rendered consequential decisions that have considerably influenced the legal terrain surrounding capital punishment, addressing procedural concerns and constitutional disputes.

The Supreme Court ruled in the landmark case of *Atkins v. Virginia* (2002) that the execution of people with intellectual disabilities (mental retardation) is contrary to the Eighth Amendment's prohibition on cruel and unusual punishment. By way of *Atkins v. Virginia* (536 U.S. 304), a nationwide precedent was set that forbade the execution of persons with intellectual disabilities.

Simmons v. Roper (2005): The Supreme Court rendered a landmark decision when it determined that the execution of criminals who committed their offences while under the age of 18 violates the Eighth Amendment by constituting cruel and unusual punishment. Nationally, the death penalty for juvenile offenders was effectively abolished by the decision (*Roper v. Simmons*, 543 U.S. 551).

These seminal cases exemplify the Supreme Court's responsibility to interpret the constitutional boundaries of capital punishment and to protect fundamental rights as guaranteed by the United States Constitution.

6. PUBLIC OPINION AND SOCIAL PERSPECTIVES:

India:

An Examination of The Ways In Which Society Perceives Capital Punishment

The diverse nature of public opinion regarding capital punishment in India is the result of a complex interaction between religious, cultural, and legal perspectives.

Proponents of capital punishment abolition in India highlight human rights concerns, apprehensions regarding unlawful convictions, and the possibility that judicial errors could result in irreversible repercussions. Supporters of abolition contend that the death penalty is intrinsically inhumane and an affront to the sanctity of life; they advocate for alternative punitive measures that prioritise rehabilitation and administer justice.

On the contrary, advocates of capital punishment in India contend that it functions as an effective deterrent against abhorrent offences and affords victims and their families a sense of resolution and justice. Advocates for the maintenance of capital punishment are also influenced by cultural convictions regarding retributive justice and societal security.

Influence of Religious and Cultural Beliefs on Public Opinion

The influence of cultural and religious convictions on public sentiments regarding capital punishment in India is substantial. Diverse religious traditions, including Hinduism, Buddhism, and others, influence discussions regarding the morality of state-sanctioned violence by emphasising nonviolence and compassion. The way the public perceives the death penalty is likewise influenced by cultural norms concerning justice, forgiveness, and retribution.

United States:

Analysis of the Divisive Public Opinion Regarding Capital Punishment

The extreme polarisation of public opinion in the United States concerning capital punishment is attributable to a variety of factors, including regional distinctions, political ideology, and ethnicity.

A common association with support for capital punishment in the United States is apprehension regarding retributive justice, public safety, and deterrence. The death penalty is commonly endorsed by conservative and right-leaning individuals who consider it an essential instrument in the fight against heinous crimes and the safeguarding of society.

Conversely, dissent towards the implementation of capital punishment stems from apprehensions regarding systemic inequities, ethnic inequalities, and the potential for the execution of innocent persons. Abolition or moratoriums of executions are frequently espoused by liberals and those leaning to the left, who emphasise the need for reform in the criminal justice system.

The Impact of Legal Developments, Advocacy Groups, and the Media on Social Perspectives

Legal developments (including Supreme Court decisions) and media coverage (including advocacy campaigns by Amnesty International and the American Civil Liberties Union) significantly influence public sentiments regarding capital punishment in the United States. Public awareness and discourse regarding the ethical and practical ramifications of capital punishment are enhanced through the presentation of high-profile cases, documentaries, and public debates.

CONCLUSION:

The examination of compulsory capital punishment in both India and the United States of America has revealed significant revelations regarding the legal, ethical, and societal ramifications that accompany inflexible methods of sentencing. By means of case studies and comparative analysis, significant discoveries have emphasised the intricacies and difficulties that are intrinsic to systems of mandatory capital punishment.

Prominent legal disputes in India, including the Nirbhaya Case and Bachan Singh v. State of Punjab, underscore the significance of judicial discretion and individualised sentencing in capital punishment proceedings. In a similar fashion, legal precedents have been established in the United States through landmark decisions such as Atkins v. Virginia and Roper v. Simmons, which emphasised proportionality and due process in death penalty sentencing.

The aforementioned case studies effectively demonstrate the adverse human effects of mandatory capital punishment, emphasising the significant ramifications that it has on communities, families, and individuals. The reiteration of significant discoveries emphasises the necessity for impartial and principled strategies in capital sentencing that give precedence to equity, impartiality, and regard for human rights.

A comparative examination of mandatory capital punishment in the United States and India yields significant observations regarding contrasting legal systems and societal perspectives concerning the death penalty. Both nations are confronted with intricate challenges concerning mandatory sentencing. However, a comparative analysis highlights the importance of contextual elements, such as political considerations, legal customs, and cultural norms. Upon scrutinising legal principles and constitutional safeguards, divergent understandings of justice and equity within capital punishment systems become apparent.

In anticipation of forthcoming developments, the reform of mandatory capital punishment laws will require coordinated endeavours to rectify systemic deficiencies and advocate for alternative methods of sentencing. Policy recommendations encompass various measures such as endorsing legislative reforms that grant judicial discretion in capital cases, fortifying procedural safeguards to uphold due process and impartiality, and allocating resources towards crime prevention strategies and social interventions that target the underlying factors contributing to crime and violence.

In addition, international cooperation and dialogue are necessary to promote abolitionist movements and cultivate a global consensus against mandatory capital punishment in order to advance human rights and justice.

In summary, the analysis of compulsory capital punishment in India and the United States highlights the critical nature of implementing principled reforms and policies grounded in empirical evidence that safeguard fundamental rights, maintain human dignity, and advance fair justice systems.

By means of nationwide endeavours and cooperative undertakings, it is possible to strive for a future in which the administration of justice is characterised by equity and compassion, devoid of the imposition of inflexible and rigorous sentencing practices that erode the fundamental tenets of justice and disregard for human life.

BIBLIOGRAPHY

1. Bohm, R. M. (2011). *Deathquest: An introduction to the theory and practice of capital punishment in the United States* (4th ed.). Routledge.
2. Human Rights Watch. (2015). *The death penalty in India: A human rights perspective*.
3. Kronenwetter, M. (2001). *Capital punishment: A reference handbook* (2nd ed.).
4. Nagin, D. S., & Pepper, J. V. (Eds.). (2012). *Deterrence and the death penalty*. National Research Council.
5. Pew Research Center. (2021). *Public opinion on capital punishment in India*.
6. Upadhyay, S. K., & Tiwari, S. K. (2017). Capital punishment in India: A review of literature. *Journal of Indian Legal Studies*, 5(2), 45–60.
7. Baxi, U. (2014). *The crisis of the Indian legal system: Capital punishment and beyond*. Vikas Publishing House.
8. Chandrasekharan Pillai, K. N. (2009). *Criminal justice and capital punishment in India*. LexisNexis India.
9. Mitra, N. L. (2000). *Juvenile justice and capital punishment in India*. Deep & Deep Publications.
10. Saxena, R. N. (1994). *Capital punishment in India: Law and practice*. Concept Publishing Company.
11. Upadhyay, S. K. (2016). *Human rights and capital punishment in India*. Academic Publishers